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# Front runner across the sport

## Clearing the hurdles

**At Grant Thornton our equine industry experts provide a high level overview of some of the current key areas and challenges that people within the equine sector are likely to encounter. There have been recent legislative changes introduced in the areas of taxation and financial planning and for optimal business planning and structuring purposes it is important that businesses give these areas some thought and focus.**

# Incorporation

### Impacts of operating via a sole trader vs company structure

With the Irish corporation tax rate being one of the lowest in the EU at 12.5% but the top rate of personal tax being 55% on incomes over €70,000 (48.75% from 1 January 2018 on incomes up to €70,000), farming sole traders/partnerships are considering the benefits of trading through a company. However, it is not a 'one size fits all' option, the decision to incorporate should be made on a case-by-case basis and only after considering all taxes, bank debt, cash flow projections and of course family interests.

## Key benefits

### Managed tax costs

Sole traders/partners are liable on their taxable profits, irrespective of whether they actually need that level of after tax income to fund their lifestyle. In a company it is only the salary drawn down that is liable to income tax. The balance of trading profits can be retained in the business and should be liable to corporation tax at 12.5%.

### Increase in working capital

Sole traders fund their working capital costs from their after tax income, so potentially only 45% of profits remain for re-investment. Corporates likewise, fund the company's working capital from after tax income but in this case approximately 87.5% of profits may be available for reinvestment.

### Pension funding

A company provides greater scope for pension funding for directors and limited liability protection. The limited liability status of a company affords the protection of personal assets as you are unlikely to be held personally liable for debts beyond the amount of capital contributed.

## Key negatives

### Increased compliance cost

Cost of incorporation and annual compliance cost for the company.

### Transfer of trade and funds

The trade and potentially the assets of land/buildings, now belong to the company. Your access to funds will be either through salary, dividend, company loan or liquidation.

### Tax costs

All tax heads must be considered, i.e. income tax, corporation tax, Capital Gains Tax (CGT), VAT, stamp duty, Capital Acquisitions Tax (CAT), so as to ensure the relevant tax reliefs are available to minimise any tax cost of transferring from a sole trader structure to a corporate structure.

### Department payments

Department payments, grants and subsidies must be paid to the company.

# Capital investment

### Timing of relief and maximising claims

Working capital consists of the accumulated after tax profits retained by the sole trader or company plus any debt finance available to the business. Investment for growth and expansion is funded from working capital. However, the cash flow impact of such investment needs to be considered given that capital expenditure is not tax deductible in full in the year that it is incurred. Instead a capital allowance for offset against taxable profits is granted as follows:

- in the case of expenditure incurred on farm buildings and land improvement, the 'farm buildings allowance' is granted at 15% for six years and 10% in the seventh year;
- in the case of plant and machinery, including motor vehicles* the allowance is 12.5% over eight years; and
- 100% allowance in year one for certain energy efficient approved equipment.

It is important that sufficient focus is given to capital allowances claims to ensure, where possible, the expenditure being incurred can be identified and the relevant claims maximised. Effective capital allowance management can unlock substantial tax savings.

# Succession planning

### Beneficial agricultural relief

Succession planning must always be given due consideration, especially the benefits of dealing with asset transfers during a lifetime rather than leaving all assets via a will. This area is particularly relevant to consider for the equine sector in light of the changes introduced in Finance Act 2014, regarding the qualifying criteria that beneficiaries need to satisfy in order to claim agricultural relief.

Agricultural relief is a 90% reduction in the market value of agricultural property for CAT purposes which arises in a gift or inheritance tax situation. A beneficiary in receipt of agricultural property worth €3 million that qualifies for the relief will only be deemed to have received €300,000 for the purposes of calculating their CAT liability. In order to qualify for agricultural relief under previous legislation, an individual must have qualified as a 'farmer' on the valuation date, ie 80% of their assets were agricultural assets and retain the agricultural property for a period for six years (ten years in the case of development land).

The changes introduced in Finance Act 2014 require that as well as satisfying the 'farmer' test at the valuation date, the property must be actively farmed in the six year period post the valuation date. This now makes the 'farmer' test more onerous to satisfy and increases the risk of potential claw backs of agricultural relief, if not managed and reviewed on an annual basis.

*There may be a limit on the allowable expenditure on motor vehicles depending on the vehicle emissions. This limit also applies to lease/hire payments.

## The three alternatives for the beneficiary are:

Hold an appropriate **agricultural qualification** and for a period of not less than six years farm the land on a commercial basis and with a view to realisation of profits.

For a period of **six years** commencing on the valuation date will spend **not less than 50%** of their normal working time farming the land on a commercial basis and with a view to realisation of profits.

Lease the majority of the land for **six years** to an individual who meets either of the conditions above.

These changes mean that in order to effectively transfer agricultural property from one generation to the next the timing of this and use of the property for the subsequent six years needs to be considered by the beneficiary.

# Stamp duty

Budget 2018 has had a significant impact on Ireland's stamp duty landscape, with the rate of stamp duty on non-residential property increasing from 2% to 6%, effective from 11 October 2017.

One area where the impact of this hike immediately shines the spotlight is on farmers/ land owners and the purchase or inter-generational transfer of farm land.
One must also be aware that this new 6% rate will apply to the transfer of a site.

**Example impact of the new 6% stamp duty rate:**

- contract signed from 11 October 2017 for 100 acres of land valued at €1 million; and
- stamp duty cost, €60,000 compared to a stamp duty cost of €20,000 before 11 October 2017.

**Transitional measures**

Fortunately, the Finance Bill 2017 contains a transitional measure to ease the move to the 6% rate of stamp duty, purchasers who have signed a binding contract by midnight on the 10 October 2017 and who enter into a deed of transfer before 1 January 2018, can continue to avail of the 2% stamp duty rate in respect of that particular purchase.

**Specific relief for farmers**

Changes have also been introduced to ensure that inter-generational transfer of farm land is not adversely impacted by the new 6% rate of stamp duty. The lifting of the age limit restriction of 67 years, in terms of the availability of consanguinity relief, makes this particularly evident. Consanguinity relief currently reduces the rate of stamp duty by half on transfers of land to relatives who are considered 'active farmers'. The Finance Bill 2017 has also ensured that this rate will be set at 1% from the date the Bill becomes law.

# VAT current focus

From 1 January 2015 following proceedings brought against Ireland at EU level businesses operating in the equine industry should reconsider the VAT rates applicable as the VAT rate chargeable will in most cases now depend on the 'VAT status' of the purchaser. The changes should not have an impact on the operation of the flat rate addition scheme.

Flat rate farmers, as defined under VAT law, with existing or new income streams, should consider the impact these income streams may have on their status as a flat rate farmer and if required what options may be available to negate any negative impact.

Similarly racehorse trainers, who can effectively avail of a 2.3% VAT rate should also consider their VAT status and the impact existing or new income streams may have on the availability of the 2.3% rate and if necessary consider what options may be available to ensure the rate is retained.

Businesses may also wish to consider the VAT impact of moving horses in and out of training, the resulting VAT claw back or VAT refund due and the VAT consequence of selling a horse while in training.

At Grant Thornton we are not just Audit, Tax, and Advisory. We are at the root of your industry creating opportunities for your business to grow and develop. We balance a desire to do what’s best for you in the future with an experienced sense of what’s going to help you now. Our distinctive client experience leads to more meaningful advice and a better working relationship for your business and industry. Be informed by those who understand the equine industry.

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