The capital gains small disposal rule

Julie Butler **considers if it is still relevant after 6 April 2002.**

With business taper relief coming into full effect from 6 April 2002, provided the conditions are met, the benefit of claiming other capital gains tax reliefs which interact with the business taper relief calculation must be called into question.

One of these reliefs is the small part disposal of land under *TCGA 1992, s242*. Under *s242*, proceeds from a small part disposal of land (for example, to be used to finance new ventures) can be maximised by taking advantage of the relief. The transferor may claim that the sale of the land does not constitute a disposal where the following conditions are met:

1 the consideration does not exceed £20,000;
2 the total consideration for all transfers of land made by the taxpayer in the year in question does not exceed £20,000; and
3 the consideration does not exceed 20% of the market value of the entire holding at the time of the transfer.

If a piece of land were to be sold, for example, by husband and wife trading in partnership, it will be necessary first of all to check if their annual exemptions for capital gains tax can be used. It will also be important to look at the business taper relief calculation. There could be strong advantages in not claiming the small disposal relief so as to secure a higher base cost for future use.

This is not an exact science. One would have to take into account such things as how the taxpayer's base cost might be used in future, and the fact that death is not a chargeable event. (If the intention was to hold the asset until death, it could be argued that the effect on the future base cost is irrelevant.) However, taxpayers who intend to make another disposal would have to look at how they could use the base cost, how it would interact with future taper relief etc. and a number of possibilities have to be considered.

The case of small disposal relief shows what a nightmare the tax planner faces. When looking at the combination of capital gains tax reliefs, volumes have been written on tainted taper and the like, and from 6 April 2002, when more beneficial rates of business taper relief are effective, there will be even more choices available to the tax practitioner.

In all these instances it will be very important for the tax practitioner to document fully the options given to the client and, above all, to be able to demonstrate that the taxpayer has been clearly informed that the decision rests with him and that he is making the decision whilst being aware of all the facts.

From a practice management point of view, there has to be careful recordkeeping. Staff must be aware that ultimately the decision rests with the taxpayer and not the tax practitioner. All advice given (whether by telephone, by e-mail or at a meeting) must be evidenced, a costly process which must be built into the fee structures surrounding such calculations.

There are many clients who have fallen into a habit of needing to make business decisions very promptly and who demand almost immediate, over the telephone, advice – do I buy now, do I sell now, etc.? It will be very important for the practitioner to make sure the client realises that with the complexity of the capital gains tax reliefs there is no such thing as a quick, over the telephone answer, and the need for proper documentation, proper fee structures and proper decision making by the client are imperative.

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Retiring partners – should a farmer ever retire?

It has been said that farmers never retire; they just die. The tax consequences of the retirement of any partner should be very seriously considered. Ceasing to be a partner is the cessation of trading status and various reliefs that go with it including agricultural property relief and, in this case, favourable tax treatment of the farmhouse. It is important, however, to look at possible retirement before death (no matter how unlikely that seems) as it may be forced on the farmer, for example by illness.

Following the business property relief case of *Beckman v IRC* (2000) SpC 226, it would appear that a retiring partner ceases to have a direct, proprietary interest in a partnership asset, including agricultural land. It was decided that the interest in the partnership (which qualified for business property relief) had been converted into a debt owed by the partnership which was no longer relevant business property.

So what are the alternatives?

Where the partnership is to continue to farm the land, it would seem sensible for the land to be out of the balance sheet so that it is not a partnership asset but is held personally by the partners as individuals. There are various ways in which this may be done, with appropriate adjustments being made in the accounts. The debt owing to the retiring partner would be reduced accordingly and he would be left with an interest in agricultural property used for agricultural purposes by someone else.

The above strategy would not work in relation to the farmhouse or cottage in which the retiring partner lives, as the house would no longer be used for the purposes of agriculture. ESC F16 would not be of any help either, since this relates to retired employees, not partners.

The tax planning exercise may be taken further to involve a home loan scheme. For farmers this can be used where the farmhouse does not qualify

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