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Tax considerations for farm development projects

Farm development projects of small brownfield sites such as old farmyards and small fields close to the village are plentiful throughout the UK. These present regular practical tax challenges for tax advisers.

There is the fundamental consideration of ascertaining whether a ‘profit’ is taxed as a capital gains tax (CGT) disposal as opposed to income tax. For this, forensic analysis of the transaction before agreements are signed is essential. The surrounding facts must be thoroughly understood to ensure the tax treatment follows as expected. The promotion agreement, if appropriate, must be scrutinised for hidden terms that could have knock-on practical tax implications. Where disposals fall within the CGT regime, there is often a choice of tax reliefs that may apply (eg, rollover relief or business asset disposal relief).

To achieve a grant of planning permission, landowners may agree positives for the local area with the local council, generally in an agreement under s106, Town and Country Planning Act 1990. Such agreements could involve conditions, such as to give up an area of farmland for tree planting, or the provision of farmland for the village green as part of the Commons Act 2006. The tax impact of these conditions should be considered as part of the CGT computation and other tax planning. For example, tree planting costs may qualify as a cost of development.

Inheritance tax implications of a transaction must also be contemplated. For instance, land being taken out of agricultural or business use may have an impact on a future agricultural property relief (APR) or business property relief (BPR) claim. Likewise, land surrendered for council use (or similar) may no longer form part of a trade, so may be caught as an excepted asset for BPR purposes.

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