

# Readers' forum



## Family business

### Does transferring beneficial ownership trigger capital gains tax?

I act for a farming partnership, the partners being father, mother and two sons. As part of an inheritance tax planning exercise, the partners will be introducing their individually owned assets to the balance sheet with a view to obtaining business property relief on let farm buildings and cottages in line with the *Balfour* and *Farmer* cases.

Under the partnership agreement, the partners will retain the beneficial interest in property they introduce to the partnership so that no capital gains tax arises and the introduction will be reflected by the creation of land capital accounts.

Ideally, we would like to transfer some of the cottages between the partners, but the direct transfer of the cottages would result in significant CGT liabilities and we have already used up their nil rate bands with other gifts into discretionary trusts. So, if further trusts were used, inheritance tax would be payable at the lifetime rate.

The acting solicitor has suggested that, once introduced to the partnership, the transfer of the beneficial interest in the cottages could be achieved by making a gift of an appropriate amount of a land capital account, the gain on which could be held over. It seems to me that the transfer is of the beneficial interest in a let cottage and the movement in the land capital accounts simply reflects that, so a CGT liability would arise. What do readers think?

Query 20,087

– Seeker.

#### There are no reliefs on let cottages and other non-trading business assets.

Seeker is correct that a transfer of a beneficial interest within the land capital accounts of the partnership gives rise to a capital gain on the individuals concerned with no holdover relief under TCGA 1992, s 165 being available on non-agricultural or non-trading businesses.

A partnership is see-through for CGT purposes, so you look at the individual assets within the land capital accounts and apply reliefs accordingly, to which there are none on let cottages or other diversified non-trading business assets.

It is pleasing that all partners have an interest in land capital as there is a debate whether this is required for property to be truly deemed to be partnership property and thus achieve the 100% BPR which is important in this case.

It is important to ensure the balance is not tipped too greatly in the 'Balfour matrix' (*Brander (Earl of Balfour) v CRC* [2010] STC 2666 (investment/trading % ratio) and perhaps even to be prepared for an increase to 80% trading (from 50%) as per the Office of Tax Simplification's review on inheritance tax as an extra safeguard.

It is also important that cottage income is not only reflected in the farm accounts but is going directly into the farm business bank account.

The correct 'trust' position of the partnership property must be considered under the TRS requirements – although much confusion exists over registration and its approach ('Don't bury your head in the sand', *Taxation*, 30 June 2022). Finally, ideally the partnership property strategy will be translated in the updated partnership agreement to safeguard all partners' interests as well as tax protection.

– Fred Butler.