

FARM TAX - THE QUANTUM OF RISK

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With the current high value of farmland any tax planning, Will planning, legal document drafting and generally all advice associated with farms when risk assessed can have quite a substantial tax risk associated with them should tax relief be denied.

HMRC have evidenced their enthusiasm to try and deny Business Property Relief (BPR) on non-agricultural property through cases such as *McCall, Balfour, Dance* and at a general level there are questions on commerciality, always being direct about asking for business plans and questioning the whole issue of commerciality.

What is happening?

There is no doubt that HMRC have a hunger to collect more tax through questioning claims for farm income tax losses and the eligibility of non-agricultural areas of the farm for BPR. Therefore, any adviser associated with farms, and this would include accountants, tax advisers, lawyers and land agents, play an important part in not just identifying the availability of tax relief but also the vulnerability of the advice they give to attack by HMRC and therefore, in turn, an attack by the taxpayer who has an extra tax bill that they were perhaps not expecting.

What to look for

Areas of weakness that can result in a loss of tax relief can be, for example:

- 1) A fragile contract farming agreement;
- 2) A weak grazing agreement that amounts to a letting arrangement;
- 3) No evidence of commerciality, e.g. hobby farming.

The question therefore has to be asked – what protection can any tax adviser put in place should the nightmare scenario arise where the taxpayer fails to achieve tax relief?

What action to take

Examples of protection:-

1. Ensuring that all the other advisers involved are connected to the strategy and understand the problems and the quantum of the risk;
2. That where extra work needs to be carried out to protect tax relief the client is warned that this has to be carried out and that this will cost extra fees and if the client declines to have this work carried out there is at least the protection that it was offered. An example of this would be a BPR audit. For example, looking at every farm and reviewing if the whole enterprise will qualify for BPR? Where are the weak areas? What are the problems? Ideally there should be identification of the weaknesses and action that could be taken. For example, it could be that in diversifying, a farm has now arrived at more than 50% of the activities in investment business, such as let property so that there is a risk of the investment properties outweighing the farming activity. Some of the surplus properties could be transferred out so as to protect the overall BPR claim. At every stage the client must be offered the opportunity of a 'BPR audit' or a 'BPR review' at the very least.

Protect yourself

There must be clarity as to who is responsible for what tasks amongst a group of advisers, who is the lead and if the adviser's file were to come under scrutiny in a professional indemnity lawyer's office how would the strength of the advice be viewed? Whilst the individual adviser might consider in good faith that they had carried out the correct amount of client

care with regard to ensuring the availability of inheritance tax relief, is that robustly reflected in the file or is it instead just engraved on the tax adviser's heart.



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