Land and tax planning

Can an accurate land and property value be obtained in the current economic climate for tax planning purposes, asks Julie Butler of Butler & Co in Hampshire.

How can this be used to best advantage by the tax planner? There are many who argue this is not the time to just "sit and wait" on development land.

What is the current value?

It is generally considered that agricultural land values peaked in the summer of 2008. By contrast many consider that development land values collapsed on 6 April 2008 the day after the "effective" rate of capital gains tax of ten per cent (40% less 75% business asset taper relief) disappeared into a U-turn. Entrepreneurs' relief (ER), the product of the Chancellor's big "U-turn," does not help development land as in principle the whole or part of a business must be disposed of to obtain ER and therefore gains are taxed at 18%.

Stalled development land projects

It is understood that these are in the main put on hold until the "credit crunch" recovers and developers are keen to build again and lenders are in a secure position to lend to potential buyers and buyers in a secure position to borrow.

What of potential property development projects? Clearly it is essential to prepare for the economic recovery period by exploring development opportunities and gaining planning consents mindful of tax planning.

Agricultural property relief and HMRC – grazing agreements

The grazing agreement and the eligibility for agricultural property relief (APR) and business property relief (BPR) has come under scrutiny in the "McCall" case re BPR and the recent APR guidelines.

The key point seems to be if there is hope or development value then a grazing agreement is not the answer. There must be greater trading activity and involvement by the landowner. "McCall" showed the difference in agricultural value and development value.

Probate – election re-sale proceeds

If the probate value was agreed before the property value crash a planning point is that a sale by the executors made within four years of the date of death for less value can be substituted for the probate value and result in an inheritance tax (IHT) refund. The key planning point must be if there is thought of a disposal, the transfer to the beneficiary should not be made too soon and the interaction of capital gains tax and IHT given full consideration.

Development trading loss

If development land was acquired at a high value by acquisition or transfer, greater tax relief can be obtained if the development activity is turned into a trade as opposed to an investment capital loss.

Development land action plan in the credit crunch

For tax planning the key points are:

- if any disposals are proposed check that "entrepreneurs' relief" can be used efficiently;
- with the appeal due under "McCall" awaited and the new HMRC APR guidelines, review all grazing agreements for "robustness" re-IHT relief should the landowner die before the land is developed;
- succession planning – achieving the future uplift in value tax efficiently via the next generation. Do the current values help the tax planning around succession planning?
- SDLT mitigation on disposals;
- development losses – conversion from capital to income via trading loss as opposed to capital loss. The emphasis is on trading.